

NATURAL RESOURCES COMMISSION**Information Bulletin #20**

This information bulletin supersedes Information Bulletin #20 printed at 26 IR 3439.

(First Amendment)

Ratemaking Process for Resorts and Marinas under Lease with the Department of Natural Resources**1. Purpose**

The purpose of this information bulletin is to implement an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the department of natural resources. The process was established by the natural resources commission during a meeting held March 24, 1998 and made applicable to rate increases to become effective in 1999 and in subsequent years. The process was published in the Indiana Register on May 1, 1998 at page 3209 as Information Bulletin #20. Amendments were made to the information bulletin during the commission meeting held on May 20, 2003, and amendments were made effective July 1, 2003. The timeframes established by the information bulletin are essential to its effective implementation.

2. Rate Increase Requests

A lessee shall submit its request for a guestroom, slip, or houseboat (if applicable) fee increase to the department of natural resources, division of state parks and reservoirs (the "department") in accordance with the existing lease agreement for the following year by April 1 of the preceding year. The lessee shall include justification for the increase request along with comparable rates from other marinas.

3. Processing Rate Increase Requests and Comments

(A) Upon receiving a request, the department will inform the division of hearings of the natural resources commission (the "hearings division"). The hearings division will assign a cause number and, in consultation with the department, select the date and time for a rate hearing to be held in Marion County. The department will advise the lessee of the date, time, and location of the rate hearing, at which time the lessee and affected persons will have the opportunity to provide comments to a hearing officer for the commission. This hearing will be held in early June or July of each year.

(B) By May 30, the lessee shall notify by must provide written notice, by personal delivery or U.S. first class mail, to each slip renter or buoy renter that the lessee is requesting a rate increase. The lessee shall include the time, date, and location of the rate hearing. This notice shall include the proposed new rates. The notice shall also advise the renter of the opportunity to provide comments to the hearing officer, either by U.S. first class mail or electronic mail. Before the public hearing, the lessee must provide the hearings division with a listing that includes the names and addresses of persons notified under this paragraph. The lessee shall, by affidavit or affirmation, authenticate that all addressees were served as indicated in the listing. If the lessee asserts the listing contains trade secrets, the Uniform Trade Secrets Act (IC 24-2-3) applies.

(C) Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate increase request shall be made available for the public to review at the lessee's business office, during normal business hours. A copy will be available for review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, IN 46204. The listing of persons notified required in paragraph (B) is not governed by this paragraph.

(D) Affected persons may send written comments concerning the proposed rate increase to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, IN 46204. Email comments may also be submitted to the hearing officer. The email address will be provided in the letter sent by the lessee to the affected parties by May 30.

(E) In accordance with the existing lease agreements, the department will analyze comparable facilities to compare rates with those sought by the lessee. Results of that analysis will be presented at the rate hearing conducted by the hearing officer. Information used in this analysis will also be available for inspection at the division of state parks and reservoirs office in Indianapolis.

4. Public Hearing and Presentation to Commission

Affected persons may attend the rate hearing and provide oral or written statements.

The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The administrative orders and procedures act (IC 4-21.5) does not apply, but the commission delegates authority to the hearing officer under IC 14-11-1-3 to make any reasonable orders to implement this information bulletin.

The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request for rate increase. Following the completion of the review, the hearing officer shall make a written report to the natural resources commission. The report shall include written findings with respect to the requested rate increase and a proposal to the commission for recommendations to the U.S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the department, and any other person who requests a copy.

The hearing officer shall present the findings and recommendations to the natural resources commission during a meeting to be held in August or September. During that meeting, the commission shall either recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the lessee. Recommendation for favorable consideration of a rate increase shall not be withheld unless, in the opinion of the commission, fees submitted exceed the

fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

5. Recommendation by Commission and Final Action by Army Corps

The commission's secretary shall memorialize the commission's recommendations in writing. Within seven (7) days after the commission meeting, the department shall forward the recommendation to the District Engineer of the U.S. Army Corps of Engineers for final action. No rate increase is effective until the lessee receives a letter of approval noting both the recommendation by the commission and the approval of a rate increase by the U.S. Army Corps of Engineers.

6. Interim Rate Adjustments or Clarifications

The commission delegates authority to the director of the division of state parks and reservoirs to approve interim rate adjustments for projects or slips not addressed in this process due to new construction or modification of existing facilities. The rates apply only until the next rate request cycle, however, when a lessee must present a petition for rate approval as provided in this information bulletin.

7. Index of Commission Findings and Recommendations

The hearings division is directed to index, and place on the commission's website, findings and recommendations made under this information bulletin after August 1, 2003. To promote equity and consistency, the department and the commission may consider these indexed findings and recommendations as precedents.
